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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,503	12/17/2001	Jeffrey K. Reinemann	10559-540001/P12560	4314
20985	7590	06/29/2005	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			FISCHETTI, JOSEPH A	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,503

Applicant(s)

REINEMANN, JEFFREY K.

Examiner

Joseph A. Fischetti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 10-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restrictions

Applicant's election with traverse of claims 1-9 in the reply filed on 4/14/05 is acknowledged. The traversal is on the ground(s) that the method has now been restricted to practice by technological means. This is not found persuasive because the system of claims of Group II can be used to practice another method such as a corporate security device which monitors the use by employees of the network. Also, claim 19 still has separate utility, such as a medium on which music can be stored and played. All the intended use recitations in the world cannot strip this attribute from this article of manufacture.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumenau in view of Nahum.

Blumenau et al. disclose a method of managing resources among networked processors 22,23,21,20 that include a host processor 22,23 and a remote processor 21. Blumenau et al. disclose a host activity monitoring facility 62 which reads on collecting accounting information at each of the networked processors to monitor utilization of the

resources; releasing a local resource (local resource is read as the switch flow through the host ports) controlled by the host processor to the remote processor (remote processor is read as the switch control 55 which controls the switch functions of the hosts 22'-25'), col. 7 lines 61,62 disclose monitoring frequencies of the host to balance usage, the frequencies being a fixed range is read as a predetermined upper threshold and thus reads on "the utilization of the local resource maintained within a predetermined upper threshold configured by an authorized user"; and col. 7 line 59 discloses a dynamic balancing facility which computes a new list of host controls on the switches based upon inter alia frequency threshold, which reduces the availability of the local resource to the remote processor by the host processor. However, Blumenau does not appear to use an accounting manager which monitors the resources at the networked processor and releases resources based on collected accounting data. But, Nahum does disclose a centralized accounting manager SVM which polls localized resources to collect accounting information (col. 10 lines 11 et seq.) at a networked processor 8. It would be obvious to modify the method of Blumenau to include a centralized manager such as device SVM in Nahum the motivation being the increased ability to forecast downstream availability of a resource.

Re claims 2,8: see, Blumenau col. 7 lines 63 et seq. a specified priority level is assigned to each of the hosts thereby answering the limitation of negotiating because prioritization inherently requires negotiations; the loop ports of the hosts 24,25 are read as an amount of the local resource and the switch 40 is read as an amount of a remote

resource; and since the activity e.g. releasing into service of the switch is proportional to that of the loop ports, there is read an exchange therebetween.

Re claim 3, 5: Since the utilization of one host loop port in Blumenau will be exclusive of another's, this occurrence is read as substantially different in time.

Re claim 4, 6: the another resource is read as the balancing facility 63 of the computer in Blumenau which is read as the centralized location.

Re claim 9: the user defined condition is read as the access of hosts to storage in Blumenau.

Re claim 7: col. lines 13 et seq. discuss trying a port to determine if it is busy and if so then rerouting data until the first port is freed which is read as form of credit which is redeemed once the port frees up in Blumenau.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

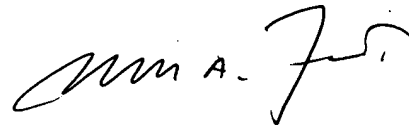
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to Joseph A. Fischetti at telephone number (703) 305-0731.

Joseph A. Fischetti
Primary Examiner
Art Unit 3627

A handwritten signature in cursive script, appearing to read "Joe A. Fischetti".

**JOSEPH A. FISCHETTI
PRIMARY EXAMINER**